

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:02-00017

CHARLES T. KIMBROUGH

MEMORANDUM OPINION AND JUDGMENT ORDER

On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on October 7, 2011, this case was designated for Expedited consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), plea agreement, original Judgment and Commitment Order and Statement of Reasons, and

addendum to the PSI from the Probation Office and received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

By its written and filed response, the United States does not object to the reduction ordered herein.

Based on the foregoing considerations, the Motion is **GRANTED** and the defendant's previously imposed sentence of imprisonment of 120* months is reduced to 77 months, plus 60 months consecutive for 18 U.S.C. § 924(c) violation, with credit for time served to date, based on the court's determination of the guideline range as set forth below.

COURT DETERMINATION OF GUIDELINE RANGE:

Previous Offense Level:	35	Amended Offense Level:	31
Criminal History Category:	III	Criminal History Category:	III
Previous Guideline Range:	210 to 262 months*	Amended Guideline Range:	135 to 168 months*
Sentenced at 210 months less October 1, 2004, reduction of 90 months (42.86%) under substantial assistance motion	120 months*	Sentence at 135 months less comparable reduction of 58 months (42.86%)	77 months*

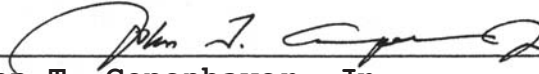
* Plus 60 months consecutive for 18 U.S.C. § 924(c) violation.

This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C).

Except as provided above, all provisions of the judgment dated June 26, 2002, shall remain in effect.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: December 16, 2011



John T. Copenhaver, Jr.
United States District Judge